Issue C18: Should a credit apply for Verizon pre-production errors, should remedies be aligned between CLEC and Verizon retail customers, and should appropriate provisions govern Yellow Pages contacts and errors? (§ 19.1.3, 19.1.5, 19.1.6.1, 19.1.6.2, 19.1.8)

Cavalier's Position:

Cavalier believes that a compensation mechanism is needed to address the problem of directory errors.

Verizon's Position:

Although Verizon strives to provide accurate and complete directory listings for all customers – both its own and customers of competitive carriers – its legal obligation is only to provide nondiscriminatory access to its directory listing process. Nonetheless, Verizon has proposed language that would make Verizon's liability to Cavalier for directory errors or omission comparable to Verizon's liability to its own customers, provided that Cavalier cooperates in verifying the accuracy of its customers' listings. Cavalier's proposals, on the other hand, seek to impose large monetary penalties for any sort of error in Verizon's directories, regardless of whether Cavalier exercised commercially reasonable efforts to ensure the accuracy of its customers' listings.[74] The Bureau should reject Cavalier's proposed language.

Recently, both the Commission and the Virginia SCC extensively reviewed Verizon's directory listing process and concluded that Verizon provides nondiscriminatory access in accordance with its obligations under the Act.[75] Cavalier proposes several changes to this

[74] Nor do Cavalier's proposals make sense. Cavalier has voluntarily chosen Verizon as the directory publisher for Cavaliers' customers' basic directory listings, a service Verizon provides but for which it receives no compensation. Cavalier remains free to publish its own directories or to contract with a third party to do the same if it is not satisfied with Verizon's directory listing service. If Cavalier publishes its own directories, it may obtain Verizon's customer listings for inclusion in its directories pursuant to § 222(e) of the Act.

[75] *Virginia § 271 Order*; *Virginia Hearing Examiner Report*

process, all of which should be rejected because they call for far greater access than Verizon is required to provide.[76]

A. Cavalier's Proposed 19.1.3 – Address Listing Identification Codes.

In Section 19.1.3, Cavalier proposes that Verizon provide to Cavalier "Address Listing Identification ("ALI") codes and other information required to process an order for a directory listing, when that information resides in Verizon's internal OSS or other systems." To the extent Verizon does not supply all of the information Cavalier wants, Cavalier proposes that Verizon be solely responsible for "any directory errors that may occur," and that "it must take appropriate steps to correct such errors, prior to the production of the directory."

Verizon is willing to aid Cavalier in obtaining the information it needs to process directory listings orders, including ALI codes. But, the directory publication process is a cooperative one in which Verizon, its directory publisher Verizon Information Systems ("VIS"), and all CLECs must work together to ensure the accuracy of every listing appearing in Verizon's directories. If Cavalier fails to receive ALI codes or other necessary information, Cavalier should contact Verizon and request the missing information. By requiring Verizon to be solely responsible for errors, Cavalier's language in effect calls for a strict liability standard, a standard much higher than the non-discrimination standard which Verizon is required to meet.[77]

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[76] Verizon is required to provide nondiscriminatory access to its directory listing service. 47 U S.C. § 271(B) The FCC has noted that, with respect to provision of directory listing service required by the Act "there is no retail analogue to measure commercial performance" and as such, other evidence should be considered to determine whether Verizon provides nondiscriminatory access. *Pennsylvania § 271 Order* at n 390. A LEC provides nondiscriminatory access where it: (i) provides nondiscriminatory appearance and integration of listings to CLEC customers; and (ii) provides listings for competitors' customers with the same accuracy and reliability that it provides to its own customers. *See Virginia § 271 Order* ¶ 152 (citing *Louisiana § 271 Order* ¶ 255. Nondiscriminatory access in this context requires LECs "to implement procedures that are intended to minimize the potential for errors in listings provisioned for the customers of competing LECs " *See Virginia § 271 Order* ¶ 152 (citing *Louisiana § 271 Order* ¶ 255)

[77] *See* note 76, *supra*

B. Cavalier's Proposed Addition to Section 19.1.5 – LVR Certification

The Parties have agreed in Section 19.1.5 to use commercially reasonable efforts to ensure the accuracy of Cavalier's listings. This language is important because it ensures that both parties participate in ensuring accurate and complete directory listings. Cavalier does not object to this language, but it proposes additional language that would shift its responsibilities in this regard to Verizon and then permit it to collect penalties for any errors and omissions that occur.

For example, a key aspect of the directory listing verification process is Cavalier's review of the Listing Verification Reports ("LVRs") Verizon makes available to all CLECs. At least thirty and as many as ninety business days prior to the "service order close" date for a particular directory, Verizon gives each CLEC an LVR containing all the listings in Verizon's database for that carrier's customers. The LVR, available in paper and electronic formats, includes name, address, listed telephone number, class of service, customer directory name, directory appearance, and type of listing. The electronic version can be imported to a third-party database or spreadsheet software such as Access or Excel, which allows a CLEC to easily search, sort and compare its listings electronically. The LVR process is a critical tool that helps CLECs and Verizon produce the best product for the consumer.

Verizon produces LVRs to help CLECs to independently validate their customers' listings prior to publication, and Cavalier's review of the LVR should be a predicate to any liability on Verizon's part for directory errors. However, rather than agreeing to take advantage of the LVR process, Cavalier includes language that would require *Verizon* to certify in writing that it has checked the LVR for each listing. Cavalier's proposal ignores entirely what should be the true goal of this process – accurate directory listings for all customers – and attempts instead, to shift its responsibilities to Verizon.

In the Virginia 271 proceeding, the Commission reviewed the LVR process and found it a reasonable process that helps ensure the accuracy of listings.[78] "The availability of the LVR affords a competitor the opportunity to review its listings before publication, and further improves the accuracy of directory listings. The LVR is only one additional tool that Verizon makes available as an option to competing carriers."[79] The Bureau should not rule differently here. Use of the LVR ensures that both parties "use commercially reasonable efforts to ensure the accuracy of its customers' listings" consistent with their agreement to do so.[80]

C. Cavalier's Proposed §§ 19.1.6.1 and 19.1.6(2) (a) and (b) – Identification of Tariff and Schedule of Charges For Omissions and Errors

Although Verizon has no obligation to credit Cavalier for omissions or errors in Cavalier customers' directory listings, Verizon nevertheless has agreed to compensate Cavalier for omissions or errors in non-chargeable listings (listings for which there is no discrete charge). *See, e.g.,* Virginia § 271 Order ¶ 171 (explicitly recognizing that Commission "rules do not address the assignment of liability and responsibility for restitution in these circumstances").

Verizon proposes language in Section 19.1.6 that makes Verizon's liability to Cavalier "comparable to" Verizon's liability to its own retail customers. Specifically, in the event of an omission or service affecting error, Cavalier would be entitled to a 50% credit on the UNE loop rate where Cavalier serves a customer with a loop or entirely over its own facilities, and a 50%

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[78] *Virginia § 271 Order* ¶ 168

[79] *Id*

[80] Cavalier could use the LVR *after* publication of the directory to identify listing errors and collect penalties from Verizon This would, of course, be contrary to its intended purpose. Cavalier should not be allowed to use the LVR as a means to find errors if it does not want to use it as a way to detect them.

credit on the resale charges for dial tone line and fixed usage services where Cavalier serves a customer with Verizon's resold services. And, as discussed in the section above, given the importance of the LVR in ensuring that customers receive accurate listings, the determination of whether an omission or error occurred will be based upon a comparison of the relevant directory and the LVR.

Verizon's proposal calculates Cavalier's credit based on the formula used to calculate credits for Verizon's retail customers, pursuant to Verizon's retail tariff. Verizon's retail tariff states that Verizon's liability "[s]hall be limited to the amount of actual impairment to the customer's service and in no event shall exceed ***one-half the amount of the fixed monthly charges applicable to Local Exchange Services***. . . . affected during the period covered by directory in which the error or omission occurs." Verizon Virginia Tariff No. 201, Section 1.E.3 (emphasis added).

Verizon's retail customers often receive less than the maximum amount the tariff allows, depending on a number of factors. For example, a business customer whose name was listed as Jane Gregory, Esq. instead of Jane E. Gregory, Esq., is unlikely to receive the maximum (if any) adjustment since the mistake was unlikely to materially affect her ability to receive calls. And if she did receive a credit, the amount would vary depending on her "fixed monthly charges applicable to Local Exchange Services," which in turn would depend on where her business was located and whether she subscribed to a "per call" service with lower fixed monthly costs or a flat rate usage package with higher fixed monthly costs.

Cavalier, on the other hand, proposes language that would require Verizon to pay a one-time credit of $150 for residential listings, $300 for business listings for businesses with 9 or fewer lines, and $3,000 for business listings for businesses with ten or more lines. Cavalier's schedule appears to be based on a Verizon retail customer in Rate Group 7 (which includes the Richmond area) with a fixed monthly usage package. Cavalier's proposal is flawed for at least two reasons.

First, Cavalier's credit schedule is based on the credits a minority of Verizon's retail customers *might* be eligible to receive for a directory omission or errors. Verizon's retail tariff has eight different rate groups that correspond to different areas in the state, and customers in certain rate groups pay more for dial tone and local usage than customers in others. For example, a business customer in Rate Group 3 (which includes rural areas like Narrows and Chincoteague) pays $34.71 per month for dial tone and fixed local usage, while a business customer in Rate Group 7 (which includes Richmond) pays $49.33 for the same type of service. And, historically, some rate groups have not offered business customers fixed usage packages.[81] As a result, the majority of business lines subscribe to measured service where the fixed monthly charges are only the dial tone charge.

Second, Cavalier's approach wrongly assumes that a credit is appropriate for any error, regardless of its type or severity. Thus, under Cavalier's approach, it would be entitled to a credit not only for omissions, but for errors that had no effect on the customer's ability to receive calls.

In addition, Verizon's proposal is reasonable. In some cases Verizon's proposed language would result in a *higher* credit for Cavalier than Cavalier's proposed language. For example, for an omission or a service affecting error to a residential customer living in density cell three that Cavalier serves with a Verizon loop or entirely over Cavalier's own facilities,

[81] Recently, Verizon began offering eligible business subscribers flat rated packages as part of its "Freedom" bundle, which offers unlimited local voice calling for $20 per month This amount is far less than the usage fee which apparently serves as the basis for Cavalier's calculations.

Cavalier would receive a credit of one-half of the UNE loop rate in that zone, or a credit of roughly $14.50 per month. This is higher than Cavalier's proposed $12.50 per month credit (*e.g.*, $25 per month for 6 months, or $12.50 per month) for an error to a residential customer's listing.

Lastly, Cavalier also proposes to include in Section 19.1.6.1 a reference to "Verizon's VSCC Tariff No. 201, Section 1.E.3." Although Verizon is not opposed to a general reference to Verizon's tariffs, a specific page reference is unnecessary and potentially confusing since tariff numbers and section designations may change when tariffs are revised. Cavalier's specific tariff reference should thus be rejected.

D. Cavalier's Proposed Addition to Section 19.1.6(.2)(c) – Yellow Page Errors

Cavalier's proposed Section 19.1.6.2 (c) addresses errors in Cavalier's customers' *Yellow Pages* listings. Nothing in the Act or the Commission's rules requires Verizon to correct Yellow Pages listings. Yellow Pages are an unregulated service in a market in which Cavalier is free to compete. Yellow Pages representatives are employed by an entirely separate affiliate, and are entitled to contact any customers of Verizon, Cavalier, or any other carrier without providing written notice to Cavalier (or anyone else). Cavalier's language should not be included in an interconnection agreement.

E. Cavalier's Proposed Addition to Section 19.1.8 – Negotiation of Direct Access

In Section 19.8, Cavalier proposes to include language stating: "the parties may negotiate in good faith an arrangement under which Cavalier will have direct, unmediated access to . . Verizon's directory databases . . . ." This language is unnecessary and inconsistent with the nondiscriminatory access standard. Verizon's legal obligation is to provide nondiscriminatory access to its directory listing service, not to a fictional directory database UNE. Moreover, for even those databases that Verizon is required to unbundle as network elements, the *Triennial Review Order* makes clear that Verizon is not required to provide unmediated access to them.[82]

Additionally, if Cavalier desires a change to Verizon's Operations Support Systems, for example, to provide "direct, unmediated access," the proper forum to discuss such changes is with all affected carriers in the Verizon OSS Change Management process or the Ordering and Billing Form under the auspices of the Alliance for Telecommunications Industry Solutions, the national standards body for the specification of guidelines for inter-carrier information exchange. This two-party arbitration is not the proper forum to consider such changes.

<u>Relevant Authority</u>:

Virginia § 271 Order

Virginia Hearing Examiner Report

Pennsylvania § 271 Order

Louisiana § 271 Order

New York § 271 Order

Massachusetts § 271 Order

Triennial Review Order

[82] *Triennial Review Order* ¶ 567

<u>Issue C19</u>: Should a new process be used to reclassify end offices into different density cells for UNE pricing purposes, as proposed in Cavalier's Virginia arbitration petition, and specifically, should the Bethia end office be reclassified into density cell one or two? (§ 20.3)

<u>Cavalier's Position</u>:

Cavalier believes that demographic changes in an area should be reflected in the reclassification of an end office serving that area, through reassessment of either the relative cost of lines in that area or the line density in that area, as is done in other states in which Verizon operates.

<u>Verizon's Position</u>:

Cavalier proposes to add Sections 20.3, 20.3.1, 20.3.2, 20.3.3, 20.3.4, 20.3.5, 20.3.5.1, 20.3.5.2, 20.3.5.3, and 20.3.5.4 to the agreement, which would establish a process for reclassifying end offices generally and the Bethia wire center in particular for UNE pricing purposes. There is no reason for the Interconnection Agreement to include language regarding the reclassification of wire centers. Both the Virginia SCC and this Commission have recognized that wire centers should only be reclassified as part of a UNE proceeding. The Bureau should reject Cavalier's reclassification language.

Cavalier has traveled this road before. In October 2001, Cavalier initiated a complaint proceeding before the Virginia SCC seeking to reclassify the Bethia wire center from density cell three to density cell one. [83] In that proceeding, Cavalier claimed that a change in population density in Bethia justified reclassification of the Bethia exchange. But, as Verizon argued in that case, the Virginia SCC set density zones based on cost, not population density. As a result, reclassification requires consideration of overall costs or, at a minimum, a complete reconfiguration of the Virginia density cell structure using existing cost data. The Virginia SCC

[83] Application and Motion, *Application of Cavalier Telephone, LLC to Reclassify the Bethia Wire Center Into Density Cell One*, PUC010213 (filed Oct 16, 2001); *Bethia Order*.

denied Cavalier's complaint, agreeing with Verizon that a change in population density did not justify the isolated reclassification Cavalier sought.[84]

When Cavalier sought reconsideration of the Virginia SCC decision, the Virginia SCC made clear it would not reclassify one exchange in isolation:

> Verizon Virginia claims in its November 28, 2001, response to Cavalier's Application that it would be unfair to reclassify one wire center without, at a minimum, an entire reconfiguration of the density cell structure and a resulting recalculation of rates. This would potentially impact the classification of other wire centers and the UNE loop rates in all three density cells. The Commission agrees with Verizon that a total reconfiguration is necessary before reclassifying even one wire center in order to remain consistent with the Commission's deaveraging methodology used in its UNE Pricing Order.[85]

During the Virginia 271 proceeding, Cavalier again argued that the Bethia wire center should be reclassified. This Commission agreed with the Virginia SCC, concluding that "reclassification of a wire center from, for example, density cell three to density cell one would change the average costs of the wire centers in both groups and the resulting loop rates. For this reason, we find no error in the Virginia Commission's decision not to reclassify a single wire center."[86]

Interconnection agreements should *not* include language that reclassifies specific wire centers into a new UNE density zone or that outlines a process to allow the parties unilaterally to reclassify wire centers in the future. However, in the interests of accommodating Cavalier's specific concerns, Verizon has proposed to Cavalier to move the Bethia wire center to density zone two.

Relevant Authority:

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[84] *Bethia Order* at 5

[85] *Bethia Reconsideration Order* at 2-3 (emphasis added)

[86] *Virginia § 271 Order* ¶¶ 134-137

Bethia Order

Bethia Reconsideration Order

Virginia § 271 Order

Virginia Arbitration Order

Issue C21: Should the agreement allow for a unilateral Verizon demand for deposits and advance payments? (§ 20.6)

Cavalier's Position:

Cavalier does not believe that Verizon should be granted the unilateral right to demand crippling amounts of deposits or advance payments from Cavalier.

Verizon's Position:

Verizon's language is very similar to the language previously adopted by the Bureau in the *Virginia Arbitration Order*[87] for AT&T. This language permits Verizon to demand adequate assurance of payment in the event that a CLEC becomes financially unstable or unable to make payment. The limited protection afforded to Verizon by this language is similar to that provided by the security payments Verizon may require of its own end users under its retail tariffs, and the insurance Verizon requires from its vendors.

Under Verizon's proposal, Verizon may request assurance of payment from Cavalier if there has been a material change in Cavalier's creditworthiness, if Cavalier cannot demonstrate its creditworthiness, if Cavalier fails to pay a bill on a timely basis, or if Cavalier admits that it is unable to pay bills or commences a bankruptcy or insolvency related proceeding. This language is necessary to address Verizon's legitimate need for financial protection from non-creditworthy entities to which Verizon otherwise may be required to provide service. The current volatile telecommunications environment makes Verizon's need for assurance of payment protection even more acute.

Verizon's recent arbitration with WorldCom provides a timely example. When Verizon provided its assurance of payment proposal to WorldCom in an arbitration before the Bureau,[88]

[87] *Virginia Arbitration Order* ¶ 972.

[88] *Id* ¶ 1.

WorldCom claimed that Verizon's proposal was only necessary for "other, less financially-stable" CLECs.[89] WorldCom's recent bankruptcy makes abundantly clear that Verizon cannot rely on apparent financial stability, past performance, or a carrier's claims of stability. The Bureau agreed with Verizon, stating, "Verizon has a legitimate business interest in receiving assurances of payment… from its [CLEC] customers."[90] The rationale behind the Bureau's decision then is even more compelling now.

An assurance of payment provision is commonplace among commercial contracts in general and in interconnection agreements, in particular, and Cavalier does not take issue with the particulars of Verizon's language. Instead, by striking all of Verizon's proposed language, Cavalier simply contends that Verizon is not entitled to *any* assurances of payment at all. Cavalier's position cannot be reconciled with industry standards, market realities and this Bureau's previous finding.

<u>Relevant Authority</u>:

Virginia Arbitration Order

FCC Emerging Declarations Order

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[89] *Id* ¶ 726.

[90] *Id* ¶ 727

<u>Issue C24</u>: Should an embargo or termination of services require prior Commission approval, as proposed in Cavalier's Virginia arbitration petition? (§ 22.4)

<u>Cavalier's Position</u>:

In the event of payment dispute, Cavalier does not believe that Verizon should have the unilateral right to force Cavalier to give notice to its customers that it may exist the market, if that is not Cavalier's intention.

<u>Verizon's Position</u>:

Cavalier's proposed language would revise Section 22.4 to require either Virginia SCC or Commission approval before either party may terminate service for nonpayment. Cavalier's language goes far beyond what is required by the current law, would be burdensome, and should be rejected.

Section 22.4 of Verizon's Proposed Agreement is consistent with the parties' obligations under Virginia law. The Virginia SCC's rules governing an incumbent's termination of service to a CLEC require notice to the defaulting party as well as to the Virginia SCC and its Division of Communications.[91] Section 22.4 of Verizon's Proposed Agreement requires that, and even more. It provides the defaulting party an opportunity to cure its default, by requiring that a default last for more than 60 days before service may be terminated, and by precluding termination of services if the defaulting party has followed the dispute resolution provision in Section 28.9.

Cavalier's redlined changes to Section 22.4, however, go *well* beyond what is required by the Virginia SCC by requiring the party seeking to terminate to first obtain the permission of the Virginia SCC or the Commission after a "proceeding in which the party whose services were to be affected has had a full and fair opportunity to present its position." Nothing in either the Commission's or the Virginia SCC's rules contemplates this process or justifies subjecting either

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[91] 20 Va Admin. Code § 5-423-80 (2003)

the Virginia SCC or the Commission to the burdens of a long, difficult evidentiary hearing.[92] This proposal would also force Verizon to continue providing service long after Cavalier has stopped paying for them.

Cavalier's rationale for its proposal makes no sense. Cavalier asserts that "Verizon should not have the unilateral right to force Cavalier to give notice to its customers that it may exit the market, if that is not Cavalier's intention," but Section 22.4 says nothing about notice to the defaulting party's customers, nor does it grant Verizon such a unilateral right. It is the Virginia SCC's rules that require a carrier to notify its *own* customers of a pending disconnection. If Cavalier disagrees with those rules, it should address that complaint to the Virginia SCC. Cavalier should not be permitted to circumvent them here by seeking special treatment from the Bureau.

<u>Relevant Authority</u>:

Cavalier E.D. Va. Billing Order

20 Va. Admin. Code § 5-423-80 (2003)

[92] In fact, Cavalier has a history of litigating in lieu of paying its bills A federal judge nearly two years ago made the observation that "[a]s a result of a billing dispute with Verizon Cavalier has simply opted not to pay, apparently in the hope of gaining some leverage in discussions with Verizon " *Cavalier E D Va Billing Order* at 4-5.

***Issue C25*: Should the agreement include a new section 25.5.7: "for legally cognizable damages claimed as a result of either party's violation of state or federal law governing the provision of telecommunications services or commerce more generally, or as a result of either party's violation of any state or federal regulations governing telecommunications or commerce more generally?" (§ 25.5.7)**

Cavalier's Position:

Cavalier believes that traditional statutory and contractual rights to damages should not be eliminated at Verizon's insistence.

Verizon's Position:

The parties agree that the Agreement should contain a limitation of liability provision (Section 25) that both reasonably limits each party's liability and ensures Verizon's performance under standards set by the Virginia SCC. Verizon proposed the same language resulting from the *Virginia Arbitration* with AT&T, and Cavalier has agreed to this language.

Cavalier, however, also proposes to gut the very limitation of liability provision it has already approved, by adding broad language that would permit Cavalier to bring a claim against Verizon for virtually any alleged violation of a state or federal law or regulation "governing the provision of telecommunications services or commerce more generally." This provision effectively seeks to guarantee perfect service to Cavalier. In rejecting a similar request from WorldCom, the Bureau found that "Verizon has no duty to provide perfect service to its own customers; therefore it is unreasonable to place that duty to provide perfect service to WorldCom."[93] The logic of the Bureau's decision is equally compelling here.

The Interconnection Agreement already contains provisions that ensure Verizon provides services, facilities and arrangements in accordance with the performance standards required by law. Section 26.1 specifically incorporates Verizon's responsibilities under the Virginia Performance Assurance Plan ("PAP"), approved by the Virginia SCC and by the Commission in

[93] *Virginia Arbitration Order* ¶ 709

the *Virginia § 271 Order*.[94] The PAP contains a comprehensive set of performance measurements for timeliness, reliability, and quality of service, as well as self-executing remedies that put up to $205 million at risk annually if performance falls below certain standards.

Verizon's proposed contract language makes clear that Verizon will meet its legal obligations, including compliance with the PAP. Cavalier cannot require more.

Relevant Authority:

Virginia § 271 Order

BA/GTE Merger Order

Virginia PAP Proceeding

[94] On July 18, 2002, the Virginia SCC approved the Performance Assurance Plan for use in Virginia, effective October 1, 2002. *See Virginia PAP Proceeding*; *Virginia § 271 Order* ¶ 198 ("We find that the performance assurance plan (Virginia Plan) in Virginia provides further assurance that the local markets in Virginia will remain open after Verizon received section 271 authorization.").

Issue C27: Should pricing be added for charges from Cavalier for Cavalier truck rolls, Verizon missed/fouled appointments, and similar items? (Exhibit A(2).)

Cavalier's Position:

Cavalier believes that it should be compensated for functions that it performs that are comparable to functions that Verizon performs at a charge to Cavalier.

Verizon's Position:

The Bureau should reject Cavalier's proposed language in Exhibit A(2) and Section 11.17, which seeks to assess a variety of separate UNE-related charges on Verizon. These include charges associated with (1) winbacks (Section 11.17.1), (2) premise visits for new loops and hot cuts when trouble is found on a loop that Verizon reported as working and functional (Section 11.17.2), (3) missed appointments (Section 11.17.3), (4) premise visits for maintenance and repair for defective loops (Section 11.17.4), and (5) Verizon requests for expedited return of a UNE (Section 11.17.5).

The Bureau lacks jurisdiction to determine the rates Cavalier proposes to charge Verizon. Moreover, Cavalier's proposed charges are unnecessary, duplicative of existing performance standards, and difficult to administer. The Bureau should reject Cavalier's proposed language.

First, the Bureau cannot order that these charges be included in the Interconnection Agreement. In the *Virginia Arbitration Order,* the Bureau held that it lacked jurisdiction over intrastate rates charged by competitive local exchange carriers to incumbents:

> [T]he Bureau, acting as the Virginia Commission for purposes of this proceeding, is authorized by section 252 to determine just and reasonable rates to be charged by *Verizon,* not petitioners.[95]

[95] *Virginia Arbitration Order* ¶ 588 (emphasis in original).

The Interconnection Agreement may include rates on which the parties have agreed. In all other cases, however, Cavalier must seek authorization from the Virginia SCC for the rates it proposes to charge.[96]

Cavalier's changes in Exhibit A(2) and Section 11.17 are also unnecessary and would be difficult to administer. These charges fall into two general categories: alleged Verizon performance lapses, and winbacks. As discussed in response to Issue 25, Verizon is already subject to performance standards in Virginia, which carry substantial monetary penalties for nonperformance. Cavalier should not be allowed to impose its own set of standards that effectively award it a double recovery whenever Cavalier claims a loss from a service deficiency. Moreover, Cavalier's proposed rates would subject Verizon to different standards for different CLECs operating in the same state. The Bureau should reject Cavalier's language and instead retain the language that subjects Verizon to a uniform set of standards that apply consistently for all CLECs operating in Virginia.

Equally unnecessary and unfair are the "winback" charges Cavalier wants to assess Verizon when a Cavalier customer decides to become a Verizon customer.[97] There is very little for Cavalier to do when a customer decides to move back to Verizon, and Cavalier should not be able to charge Verizon for these limited work activities, particularly because Verizon does not charge Cavalier or any other CLEC for these same activities. For example, when a customer moves back to Verizon, Cavalier needs to port the customer's telephone number back to Verizon.

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[96] *Virginia Arbitration Order* ¶ 589 ("[P]etitioners provide all of the services at issue to Verizon pursuant to tariffs filed with the Virginia Commission.)

[97] *See* Cavalier's Proposed Section § 11 17 1

The Commission ruled in the *Number Portability Order* that carriers are not entitled to charge each other for porting numbers.[98]

Finally, the charges that Cavalier proposes would be difficult and time consuming to administer. Because each charge would depend on different facts and interpretations, the parties would likely spend countless hours and significant resources disputing which charges might apply. It is these very fact-intensive, individualized disputes that performance standards are designed to avoid.

Cavalier's language in Exhibit A(2) and Section 11.17 should not be included in the Interconnection Agreement.

Relevant Authority:

Virginia Arbitration Order

Number Portability Order

[98] *Number Portability Order* ¶ 49 ("We find that it would be competitively neutral from carriers to pay their own incremental interim portability costs, that is, to absorb the costs themselves or pass the costs onto their own retail customers." (citations omitted))

Issue C28: Should the parties' obligations regarding V/FX traffic be reciprocal? (§§ 1.51(7), 1.52(a), 4.2.7.15(c), 4.2.7.15(e), 5.6.6, 5.6.8, 5.7.4.9, 5.7.5.2.1, 5.7.5.2.4.1, 5.7.5.2.4.2)

Cavalier's Position:

Cavalier believes that, if virtual foreign exchange traffic is eliminated from reciprocal compensation paid by Verizon to Cavalier (and otherwise handled), then the parties' rights and obligations with respect to such traffic should be reciprocal.

Verizon's Position:

Cavalier proposes that the Parties' rights and obligations with respect to virtual foreign exchange traffic be reciprocal. Verizon will agree to such treatment, provided that Cavalier agrees to the same rates as Verizon charges for such traffic. Reciprocity is only fair if it is truly "reciprocal" in the applications of charges. Therefore, Cavalier's rates for virtual foreign exchange traffic should mirror Verizon's rates, just as must the reciprocal compensation rates for Section 251(b)(5) traffic.

Cavalier has also proposed changes to Section 4.2.7.15(e), which is tangentially related to this issue. These changes relate to Cavalier trunks that both parties use to deliver virtual foreign exchange traffic and reciprocal compensation traffic. Cavalier, however, fails to identify this section in its Petition, or to raise it as a separate issue, or to explain or justify these changes. For these reason alone, Cavalier's proposal should be rejected.

Cavalier's proposed Section 4.2.7.15(e) is also inconsistent with language to which it agreed in Section 4.2.7.15(c). The latter section provides that when Verizon delivers virtual foreign exchange traffic over Cavalier facilities that are also used to deliver reciprocal compensation traffic, virtual foreign exchange traffic is excluded in determining the parties' proportion use of those facilities. In Section 4.2.7.15(e), however, Cavalier proposes just the opposite. Cavalier does not even attempt to explain this inconsistency. Therefore, Cavalier's proposed Section 4.2.7.15(e) should be rejected.

<u>Relevant Authority</u>:

47 U.S.C. § 251 (b)(5)

47 C.F.R. § 51.701 – 709